



1 APPEARANCES (continued:)

2  
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9  
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1 (The following proceedings were had in open  
2 court:)

3 THE CLERK: 2008 CR 888, United States versus  
4 Blagojevich, et al.

:20PM

5 MR. SCHAR: Good morning, Judge.

6 Reid Schar, Chris Niewoehner, Carrie Hamilton  
7 on behalf of the United States.

8 MR. SOROSKY: Sheldon Sorosky on behalf of  
9 Rod Blagojevich.

:20PM

10 MR. ETTINGER: Michael Ettinger and Cheryl  
11 Schroeder on behalf of Robert Blagojevich.

12 THE COURT: What I propose to do is deal with  
13 some preliminary matters and then discuss the issue  
14 of redactions. We'll deal with the redactions last.

:21PM

15 The government has a motion in limine  
16 regarding evidence regarding investigation and  
17 prosecution of co-conspirators.

:21PM

18 what my inclination to do is to grant the  
19 motion in a general sense, but this is one in which  
20 before we get -- actually, before we get to this  
21 point I have to have clearly submitted to me, and  
22 obviously to defense counsel as well, exactly what  
23 it is you want to put in and when you want to put it  
24 in. I understand the general tenor of this, but I  
25 need more specifics and so does the defense.

:21PM

1 MR. SCHAR: Judge, very late this afternoon  
2 you may not have had an opportunity yet, we filed a  
3 reply that lays out in much more detail.

4 THE COURT: Then I'll take a look at it.

5 MR. SCHAR: That is an issue that we would  
6 obviously like to open on as part of our theory and  
7 explanation. So if you think that would be  
8 problematic, if you could let us know ahead of time,  
9 that would be great.

10 THE COURT: I'll take a look at it.

11 MR. SOROSKY: Your Honor, just concerning  
12 that one motion. One of the things we asked for in  
13 response to the government's response was should the  
14 Court grant the motion in a general sense, as Your  
15 Honor did, and if the government wants to introduce  
16 this matter or refer to these matters in opening  
17 statement, perhaps we need an evidentiary hearing or  
18 some type of proffer to see what it is that the  
19 government is exactly going to present.

20 MR. SCHAR: The reply.

21 THE COURT: He says the reply will cover and  
22 if it doesn't, then we'll deal with it.

23 With respect to the comments made about the  
24 selection of a petit jury --

25 MR. SCHAR: We've not actually --

1 MR. SOROSKY: That was not the defendant  
2 attempting to --

3 THE COURT: Please let me make some opening  
4 comments. The original motion I think was filed in  
5 haste because it cited inappropriate law and they  
6 filed a supplement. I can see why perhaps the  
7 defendants may have been misled by my comments into  
8 believing that there was some form of examination of  
9 jurors involved. There is no examination of jurors.  
10 I simply looked at the applications and performed  
11 the function that usually the jury room clerks do,  
12 which is determine hardship. I did refer to some  
13 jurors with a hardship issue was not very clear and  
14 I said I needed clarification. Clarification  
15 usually comes in the form, and I'm not the only  
16 judge in this building that does this, I have a list  
17 of people who said yes and we deal with people who  
18 said yes first on the proposition that people  
19 willing to do it are more likely to be fair and  
20 open-minded jurors and least likely to decide the  
21 case on the basis of who they blame most for being  
22 stuck in a jury for a very long period of time.

23 In addition, there's a third category, and  
24 those are the jurors where we need clarification,  
25 and some judges call them the Maybe File, and if you

1 don't get enough out of the Yes File, you go to the  
2 Maybe File.

3           The Maybe File consists of people whose  
4 reasons for seeking not to be selected for the jury  
5 may be based on some misconception of what's being  
6 demanded of them. And in some cases, for example,  
7 you'll have somebody who raises what appears to be a  
8 financial hardship claim--and we've had I think a  
9 very large number of those, much larger than we  
10 usually have--and ones in which today's economy seem  
11 to be fairly compelling. But, for example, there is  
12 one in the Maybe File that indicated that both the  
13 summoned juror and the spouse were unemployed and  
14 actively looking for work and they specified that  
15 they were living on benefits with a certain figure  
16 or amount, I forget what it was. These are  
17 individuals who might alter their views if they were  
18 told that you actually get paid for jury service,  
19 and in their case the pay they would receive for  
20 sitting four weeks would just about double, that's  
21 what that group consists of. But I generally start  
22 with the yeses.

23           The law from my perspective seems pretty  
24 clear that determination of hardships on the paper  
25 alone, ordinarily performed by the clerk in the jury

1 office, does not constitute voir dire, does not  
2 constitute the beginning of the trial. The law  
3 usually is the right to participate in jury  
4 selection exists when the case is announced, jurors  
5 are called for that purpose, and they are questioned  
6 in open court, and in some cases in the jury room,  
7 depending on a variety of things, but that is the  
8 full panoply of rights that apply.

9         The case that I think deals with this to some  
10 extent is United States versus Greer 285 F.3d out of  
11 the Second Circuit, and the Greer case I looked up,  
12 I have another place where I collected a lot of  
13 stuff and so I don't actually remember these cases,  
14 but I do have a note on United States versus  
15 Contreras, 108 F.3d from the Tenth Circuit and  
16 United States versus Barnett, 800 F.2d from the  
17 Eleventh Circuit. And I notice that in the original  
18 motion there is a citation to the proposition that  
19 trial begins with voir dire, which is true, but  
20 we're not at voir dire yet. So you can look at that  
21 if you wish, but I am preliminarily denying the  
22 motion.

23         MR. SCHAR: Judge, we would like the  
24 opportunity to file something with a variety of  
25 other arguments as well, but make the motion

1 unsustainable, from the government's perspective,  
2 though --

3 THE COURT: Oh, also--sorry to interrupt--one  
4 other thing. We might actually have been able to  
5 resolve this with less effort if all that had been  
6 requested by the party was to look at the papers.  
7 When I read the motion and I saw that, I ordered  
8 that those papers be available to counsel today and  
9 I think they have been examined.

10 MR. SCHAR: Judge, I can say I believe both  
11 parties examined them, and we don't believe any  
12 issues with --

13 THE COURT: Any individuals with issues?

14 MR. SCHAR: Correct, Judge.

15 THE COURT: But if the defendant has issues  
16 with the original ones, they can raise it.

17 MR. SCHAR: I'm sorry?

18 THE COURT: If the defendants have seen those  
19 papers, have some concerns, they can raise them with  
20 me.

21 MR. SCHAR: I guess, Judge, again, so the  
22 record is complete, I read one of the motions the  
23 issue was whether or not even if the defendants had  
24 a right, I assume we would certainly have no  
25 objection if the defendants want to come in



1 themselves and actually look at these papers, and it  
2 clearly is a procedure that sounds like what you're  
3 offering their particular right of objection to one  
4 or more, I'm sure the judge can address that.

:30PM 5 THE COURT: It is also designed for one other  
6 purpose, and that is if you can infer looking from  
7 the mass there was some systematic error in terms of  
8 race, gender, and everything else, so you can look  
9 at them, that way and the defendants can look at  
:31PM 10 them, too. From my perspective, it's just in my  
11 exercise of discretion, and I think it's best to let  
12 them look at it.

13 MR. SCHAR: Exactly, Judge.

14 MR. ETtinger: We would like, if possible,  
:31PM 15 the copies that can be under seal.

16 THE COURT: No, I'm not having those copies  
17 out. The ordinary citizen's privacy has to be  
18 protected.

19 MR. SOROSKY: Your Honor, would the Court  
:31PM 20 consider--I recognize this is a difficult task in  
21 the selection of the jury--would the Court consider  
22 returning to what an old-timer like me called it the  
23 "old fashion way" and have all the jurors come  
24 before the Court and be questioned in the  
:31PM 25 old-fashioned traditional way and then the Court in

1 person in open court could determine who should be  
2 excused for cause versus not to be discussed for  
3 cause? Because, I mean, I've read the jurors  
4 responses and they're vague, they're general, they  
5 relay hardships, but every person, even the person  
6 who is most suitable to serve on a jury, could  
7 honestly say well, I don't want to serve on a jury  
8 for a week or two weeks or a month, I want to do  
9 whatever I'm doing. So jury duty is a hardship and  
10 a disadvantage, and perhaps an economic disadvantage  
11 for every person, even if someone were a  
12 multimillion and say I can't go to the stock  
13 exchange and make more money.

14 THE COURT: Let me ask you this one question,  
15 what good is going to be achieved by dragging down  
16 to the courthouse this 28--and I don't think I'm  
17 sure I remember this correctly, but I think I  
18 do--some 28-year old woman who has three children of  
19 a very young age with a husband who's got a blue  
20 collar job and no ability to provide care for these  
21 children? The truth is is there are many, many in  
22 that pile who quite clearly would not justify the  
23 imposition of this burden on them. And this is why  
24 Clerk's Offices have hardship excuses for this very  
25 reason, because you're imposing an undue burden to

1 some who cannot possibly serve. So if you're saying  
2 call them all in, the answer is no.

3 MR. SCHAR: Let me add, having reviewed them,  
4 many of them are not vague at all, they're very  
5 concrete, many with significant medical issues and  
6 things of that sort, and it seems to me that there  
7 is a particularized object to a particularize  
8 person, they now have, I believe, four hours today  
9 to review them. I assume they would be available  
10 tomorrow to both defendants as well as defense  
11 counsel, there are particular objections to be dealt  
12 with. Again, your Honor made the jury selection  
13 process that typically everything gets through Your  
14 Honor, the Clerk of Court deals with hardship  
15 challenges, has been endorsed by the Seventh Circuit  
16 panel which actually adopted that procedure.

17 THE COURT: So basically I'm not returning it  
18 to the old-fashioned way, and to tell you the truth  
19 I don't think that in state courts the Clerk  
20 exercised the same authority not to impose hardship,  
21 but the truth is I'm not going to do it and you made  
22 whatever record you want to make.

23 MR. SOROSKY: well, we have no quarrel with  
24 individuals such as you described being excused, we  
25 have no quarrel if an individual fits the

1 circumstances you described being excused if this  
2 person cannot possibly serve as jurors because of  
3 her young children, and so forth and so on, and we  
4 recognized that. However, however, having read and  
5 gone over the responses of whatever it was of  
6 approximately 300 or so veniremen, if not all were  
7 quite as --

8 THE COURT: which is why you have the right  
9 to make particular objections.

10 MR. SOROSKY: well, this is why we're asking  
11 for it, if possible, if possible, in the interest of  
12 fairness that with the exception of those people  
13 that the Clerk very readily or Your Honor very  
14 readily excused for very overt and obvious reasons,  
15 that every one do come in so a more accurate  
16 determination can be made.

17 THE COURT: It is not my belief that it would  
18 be difficult for you in good faith to take any but a  
19 relatively small number of people and based on what  
20 I've read. So make your selection, I'll look at  
21 them, and if I think any purpose would be served,  
22 any legitimate purpose would be served by calling  
23 them in, I will call them in.

24 MR. SOROSKY: Thank you. Thank you. We  
25 will.

1 MR. ETTINGER: Judge, will they be available  
2 tomorrow? We couldn't get here today.

3 THE COURT: Yes, they are. They're available  
4 to you.

5 MR. ETTINGER: What time?

6 THE COURT: I gave 10:00 to 2:00 today. Same  
7 time.

8 The other aspect of this motion, there was a  
9 second request attached to this motion, which was  
10 the third or fourth request to stay the beginning of  
11 the trial, and just for the record, I'm denying it.

12 Are we ready for redactions?

13 MR. SCHAR: Judge, there are a couple of  
14 quick issues from the government. Are we having  
15 jury selection next Friday?

16 THE COURT: Yes.

17 MR. SCHAR: We have gotten notice from the  
18 defense of several individuals who may be called as  
19 experts. We've gotten a name, even an address, and  
20 just topic area, such as accounting or law. At this  
21 point we would ask a date certain with compliance  
22 with Rule 16, which we have not gotten through this  
23 date, of any reports or what the content of the  
24 testimony would be.

25 THE COURT: Well, I will order that to be

1 done. You can negotiate the date, and if he  
2 decides, I'm satisfied with the date.

3 MR. SOROSKY: Thank you. We'll work with the  
4 government and I'm sure we'll reach some amenable  
5 result.

6 MR. SCHAR: Some other names that the  
7 government proposes to add to the jury inquiry, we  
8 will e-mail those, if it's okay, to the courtroom  
9 deputy and copy to the defense counsel as well.

10 THE COURT: Well.

11 I don't really think I have to deal with Lay  
12 witnesses' Conclusions of Law except in this sense:  
13 If either side believes that a witness is likely to  
14 express a conclusion of law, you will raise it with  
15 me and then I'll decide on those basis.

16 I've read the government's explanation with  
17 proposed redactions, I have read, by both the  
18 lawyers, lawyers of both defendants, I've read the  
19 government's response, I read the supplemental  
20 objections, which on the face they talk about Tab 1,  
21 under 102, but I don't think they meant 102, it's  
22 101 that they're talking about. I also believe that  
23 there are significant number of issues that were  
24 raised by the defendants that are not actually  
25 issues. The defendants seem to say that -- they say

1 they thought perhaps it might have been marked as a  
2 redaction but in fact it was not a redaction and the  
3 government said they weren't redactions and I think  
4 that's Tab 6, Tab 37, Tab 42, and I think that's  
5 that.

6 The general objection to all redactions is  
7 overruled because it's too general in nature. I  
8 assume it was done to preserve the record, and  
9 that's fine.

10 With respect to Tab 1, the problem I find --  
11 and this is a redaction that I'm sustaining over  
12 objection, but it's illustrative of the issue that I  
13 have to consider, and that is this is unlike the  
14 general objection more specific, not a lot more  
15 specific, but specific enough that I understood what  
16 the objection was, this has to do with issues about  
17 the raising of funds.

18 And the government's redactions are  
19 substantial in volume and the objection was you  
20 needed the rest of them for contribution. There are  
21 two ways you can deal with this particular  
22 objection, one of the ways is is that you really  
23 don't understand what in this case Robert  
24 Blagojevich is doing with the conversation unless  
25 you read the rest of it and that's just not true.

1 It's quite clear. The fact that in addition to  
2 raising funds with this particular person he was  
3 raising funds with other persons, so it's not adding  
4 anything for the contribution. If the point of the  
5 contribution is that it appears, the government will  
6 argue, that that's being played, one of the  
7 defendants is offering a quid pro quo, which I think  
8 is what the government is going to argue, the rest  
9 of it might, I guess in theory, be offered for the  
10 proposition that sometimes the fund-raising did not  
11 involve a quid pro quo. The difficulty with that is  
12 the one that I mentioned once before, and that is  
13 what's at issue here is a particular moment in time  
14 when the prosecution alleges that a defendant did  
15 something that violates the law and it is not  
16 particularly relevant, in fact perhaps not relevant  
17 at all, that on other occasions he took a more  
18 restrained perspective, restrained set of actions to  
19 achieve his goal, the matter is the contribution,  
20 the rest of it does not improve the contribution and  
21 for that reason I sustain the redactions.

22           There's another aspect of some of these in  
23 which was raised that certain information explain  
24 state of mind. This state of mind hearsay exception  
25 is related a little different than the excited



1 utterance, and in fact most cases that state-of-mind  
2 exceptions to the hearsay rule you will find, if you  
3 read them carefully, also involve excited utterance,  
4 something which has been noted by almost every  
5 scholar who deals with this stuff. And in that  
6 respect, I do note with one exception, which I'm  
7 going to address at some length, what the objection  
8 to redactions is that it explains state of mind in  
9 the sense that you can deduce from what someone said  
10 something about their state of mind which they don't  
11 actually say. The big dividing line in  
12 state-of-mind cases is state of mind in the sense  
13 that somebody actually says I was sad, I was  
14 terribly upset when I saw this certain thing and  
15 validates the witness's later testimony, and in some  
16 cases if the witness is unavailable, allows that  
17 evidence to come in.

18 That's not what I have here, what I have here  
19 is a series of statements a defendant made from  
20 which one could deduce state of mind, but I don't  
21 think that they actually do that. I think somebody  
22 says a variety of things, somebody in some cases  
23 that was available as a witness, not the defendant,  
24 and it's simply a variety of statements from which  
25 you cannot derive inference from a particular state

1 of mind that is anymore plausible than any other  
2 inferences. In other words, it doesn't establish  
3 anything, and for that reason, with respect to  
4 Tab 12, I approve the redactions.

5           The bigger issue that I see that are still  
6 alive I'm going to address all of them except  
7 Tab 56, because I made a notation to myself which I  
8 somehow skipped, which is to read that particular  
9 transcript, and since I won't know what I'm the  
10 talking about, I won't rule on it.

11           Tab 93 a conversation between the two  
12 defendants in this case. There's more that's asked  
13 for, and part of this is to explain contribution,  
14 and you really don't need to explain, the  
15 contribution is perfectly clear. What I think the  
16 defendants want in this case is material in which  
17 the defendants say things that are vaguely  
18 exculpatory. I don't think excited utterance works  
19 here. There is an argument that defendants made  
20 that rules out excited utterance is a passage of  
21 time, a long time between this and the utterance,  
22 and I'm satisfied that the problem is not passage of  
23 time, there wasn't much time that passed. The  
24 difficulty is is if you read it as a whole, it  
25 basically is not excited utterance, it is the one

1 thing, were it to be admitted, probably the single  
2 longest excited utterance in history. Excited  
3 utterance is usually a 911 phone call in which  
4 somebody says something like mommy shot daddy, not a  
5 very long statement, this is a speech and maybe a  
6 rant as well, depending on how you read it, it  
7 doesn't clarify contribution, it doesn't add any new  
8 data. It's, generally speaking, the reason it's  
9 sought to be admitted, except for contribution, is  
10 an exception to the hearsay rule and the proponent  
11 has to show acceptability and I think it's fair to  
12 do so in this case.

13           The only way it could come in is if the  
14 defendant, for example, testifies some other witness  
15 gets this in and has an explanation for a series of  
16 actions and the prosecution says it's a recent  
17 fabrication. In theory, that could come in, but I  
18 doubt that would occur either, and the reason I  
19 doubt that would occur is because at the time they  
20 uttered it, although I make no final ruling on  
21 this--I could be persuaded to the contrary--at the  
22 time of this utterance they had a pretty good idea  
23 at the time the jeopardy they might be facing. So,  
24 basically, I believe the redactions in Tab 93 are  
25 valid.

1           with respect to Tab 95, which I believe is  
2 defendant Robert Blagojevich, I don't think the  
3 other defendant was involved in this but I may be  
4 wrong, the fact is is that the question of why a  
5 defendant will do something like cancel a meeting,  
6 which was the subject of that one, isn't really  
7 elucidated by the entire call at all, and that's the  
8 reason it's offered, it will show the reason. It  
9 doesn't show the reason, it shows some things from  
10 which someone could infer a reason, but again, the  
11 inference is not clear. And by "the inference is  
12 not clear" I don't mean you couldn't make the  
13 inference. I mean, there is nothing about the those  
14 words that makes one thing more plausible than  
15 another, and under those circumstances, it doesn't  
16 work. So I'm sustaining those.

17           I should go back Tab 50. This has to do with  
18 conversation in which a potential witness, probably  
19 the witness Alonzo Monk, makes certain statements to  
20 Robert Blagojevich, I believe, and he says something  
21 about where he is and things that aren't true, I  
22 believe the government cuts short which is  
23 essentially relevant to the defense.

24           So I would add page 1, Line 13 to page 2,  
25 Line 12. The reason I'm adding those is while it is

1 true that Monk falsely stated something to Robert  
2 Blagojevich about where he was, the rest of that  
3 passage that I've cited shows that not only the  
4 basic request about whether he's visiting his sick  
5 father, but there's a lot of other things that he  
6 says, well contrived, lots of details, and in a case  
7 in which I believe the defense will attack his  
8 credibility, the manner in which he told that  
9 falsehood is relevant. So that redaction is  
10 overruled.

11 Tab 100 --

12 MR. SCHAR: Just so I'm clear so we don't  
13 mess this up, you said that redaction, other than  
14 page 1, Line 13 through page 2?

15 THE COURT: Is the same.

16 MR. SCHAR: Thank you.

17 THE COURT: Tab 100, this one I understand,  
18 the only problem is is that what the defense wants  
19 in, they want in not for itself but they want to  
20 draw inferences about it based on things that aren't  
21 contained in the call. For example, there are  
22 arguments about the jury should know that the real  
23 reason for this or the real reason for that was,  
24 which is quite true, the only thing is where they  
25 get the information from what they believe is the

1 real reason from Harris' 302, it's not something  
2 contained in the call, and because it's not  
3 contained in the call it's not helpful to the  
4 defense. And there are other things viewed in terms  
5 of the whole evidence in the case, there are  
6 arguments that can be made about what somebody did  
7 or did not do, but the call doesn't help to  
8 establish that. It is possible that some of this  
9 and 100 might be independently admissible in the  
10 defense case, but as far as a jury understanding  
11 Tab 100, the redactions are appropriate.

12 I would not predict what would be allowed to  
13 come in if Harris is on the witness stand, but  
14 that's my view respect to that and my ruling. And I  
15 have to say in reading this, that not only is much  
16 of the contribution implied by evidence and facts  
17 that are not in the transcript, they weren't alluded  
18 to in the call, and the testimony really has to come  
19 from witnesses. There is, in addition, the  
20 difficulty that the stuff that's wanted on page 5  
21 and several other pages are really not for  
22 contribution at all. They're nothing to do with  
23 contribution, they are designed to offer for the  
24 truth other facts whose relevance I doubt, and if  
25 relevant to its admissibility under 403 I doubt, so

1 I'm approving those redactions.

2           On 101, this raises the same issue as raised  
3 in Tab 1. What the defendants want is to show that  
4 contributions which the government claims were made  
5 improperly or with an improper purpose, solicitation  
6 for an improper purpose, there was at the time of  
7 this, at the time that these activities were taking  
8 place, another potential contributor, and the  
9 position that this defendant is that you should show  
10 that while the government can argue that attempting  
11 to get a contribution from one of them it cannot  
12 argue on the basis of the evidence that that  
13 individual was improper in any way, it's the same  
14 issue they dealt with in Tab 1. It's not relevant  
15 to the defense if the claim is that sometimes the  
16 contributions were done in an entirely proper way,  
17 the accusation is that on specific occasions it  
18 wasn't, and the fact that on other occasions it was  
19 okay doesn't help.

20           I do believe that the reference to the fact  
21 that there were a series of calls being made, first  
22 you call this guy and then that guy or they divide  
23 it up, they ought to be permitted and you can figure  
24 out what the lines are. I think we're talking maybe  
25 about page 2, Line 16, to page 3, Line 4. I may be

1 wrong about that but those were the notes I made.  
2 And I think this one I wondered whether it was  
3 tongue in cheek, actually. This is the statement,  
4 the first portion of redactions in page 1 through 5  
5 should be admitted. It's hard for me having read  
6 this, to think the defense actually wants this in,  
7 but it's not my judgment to make, it's the defense  
8 judgment to make. But it's just not at all  
9 relevant. And it's also clear that what is wanted  
10 about most of this, the portion of the conversation  
11 that illustrates how one defendant intended to  
12 obtain campaign contributions in the same way as one  
13 opposed to the other of the two proposed  
14 contributors is basically offered for its truth, not  
15 state of mind. As long as the jury understands that  
16 there were two on the list, I think that's enough.

17 MS. HAMILTON: I'm sorry to interrupt. Could  
18 I ask you to repeat the section you thought might  
19 take care of the inference to the fact that there is  
20 a series of calls, you believe page 2, Line 16?

21 THE COURT: Page 2, Line 16, through page --  
22 16 I'm sorry, 16 through 33.

23 MS. HAMILTON: Thank you.

24 THE COURT: And then page 3, Line 4. It's  
25 the end of page 2 and the four lines on top of



1 page 3.

2 MS. HAMILTON: Thank you.

3 THE COURT: I will deal with Tab 56 after  
4 I've read it.

5 And I think that takes care of everything.  
6 One observation I want to make with respect to  
7 defense case, if one is presented, is that much of  
8 what the defense wants to play -- let me correct  
9 that. The defense submitted a very large book of  
10 possible things that they want to play, and I'm not  
11 inferring from that that they want to play all of  
12 them, it's just this is the universe for which they  
13 are going to pick and choose. Much of what is in  
14 there is going to wind up being hearsay even if the  
15 person who utters it is on the witness stand, and  
16 much of it will be admissible only under the rule  
17 which allows a defendant to introduce prior  
18 statement to rebut an argument that there's a recent  
19 fabrication, and obviously since I don't know what  
20 the defense is going to be, I don't know whether  
21 that will come up. There have been a couple of  
22 suggestions of some things in which the government  
23 may very well suggest that it's recent fabrication,  
24 if that occurs then some of the stuff will come in,  
25 but my caution is, I don't want this case tried on

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1 the basis that the thing we have to figure out is  
2 whose version of what happened and what is portrayed  
3 on the recordings is correct. What we have to  
4 decide, what the jury will have to decide is whether  
5 the charges have been proved beyond a reasonable  
6 doubt or not. And I see on these competing versions  
7 and some of the requests for recordings a tendency  
8 to kind of try to shift the issue, and maybe even  
9 this is true for the government as well, it's an  
10 argument that our versions of what happened in the  
11 recordings is correct.

12       There, I believe, will be evidence offered by  
13 the government that there's nothing to the  
14 recordings, the witnesses will say I was there, this  
15 happened. So I don't want us to get to the point  
16 where we're arguing about exclusively about what is  
17 meant on the recordings. It will not help either  
18 side to lose sight of what the core issue is, which  
19 is not exactly what somebody meant on this or that  
20 recording but whether there's proof. And the  
21 recordings, while in some respects the most florid  
22 part of this case, are likely to be not necessarily  
23 the center piece of a rationale decision as to  
24 whether guilt has been proved beyond a reasonable  
25 doubt. That's just an observation. You can bear it

1 in mind as you prepare.

2 Is there anything else I have to do today?

3 MR. SCHAR: Judge, I think that resolves  
4 defendant Robert Blagojevich's objections, but I  
5 know there have been a variety of objections by  
6 defendant Rod Blagojevich to different tab  
7 redactions that you haven't addressed.

8 THE COURT: Different what?

9 MR. SCHAR: Tab.

10 THE COURT: The last two I dealt with, 100  
11 and 101 are Robert Blagojevich's objections. The  
12 other thing I have showing for him are I thought not  
13 terribly significant things with the exception of  
14 56, and I have 32, 33, 37, 42, 51 and 53. I am  
15 probably going to address those in short order.

16 MR. SCHAR: Okay. That's fine. The only  
17 other one, Judge, the government provided redactions  
18 on a different binder the Levine phone calls. We  
19 haven't -- I think that was provided a week ago,  
20 same time as everything else. We haven't gotten any  
21 responses other than that tone which indicates some  
22 later objections. These issues, from the  
23 government's perspective, do need to be resolved.

24 THE COURT: I just have a feeling, given  
25 what's happened in prior cases, that redaction

1 issues are not the center of the defense concern or  
2 the center of the defense strategy.

3 MR. SCHAR: Judge, early witnesses, I  
4 obviously would --

:09PM 5 MR. ETTINGER: Which ones?

6 MR. SCHAR: In term of the Levine wiretaps.

7 MR. ETTINGER: That's good enough. Thank  
8 you.

:09PM 9 THE COURT: I also have the government's  
10 standard motion to use a summary witness for data.

11 MR. ETTINGER: No objection.

12 THE COURT: I assume there's not going to be  
13 an objection for that.

14 MR. ETTINGER: No.

:10PM 15 THE COURT: Okay. Mr. Walker will inform you  
16 of the next time you have to be here.

17 MR. SCHAR: Mr. Sorosky is also amenable to  
18 the summary witness without objection.

19 THE COURT: He is nodding.

:10PM 20 MR. SOROSKY: Right.

21 we'll try to work with the government on the  
22 Levine redactions.

23 THE COURT: Yes.

:10PM 24 MR. ETTINGER: Judge, at some point,  
25 certainly doesn't have to be right now, I'd like to

1 address again, go over with you our tapes regarding  
2 what are coming in so we can give opening statement  
3 that's going to comply with your order.

4 THE COURT: If you're asking me to rule now  
5 on the recordings that you want to introduce, I  
6 can't do that, and the reason I can't do that is  
7 because there seems to me to be an extraordinarily  
8 large number of barriers to your introducing them at  
9 all. So I'm unwilling to give you a ruling on that.

10 Let me express two reasons for this. The  
11 first is that if you're going to offer a tape  
12 recording of something your client said, you got a  
13 very heavy hearsay barrier to doing that, so the  
14 probability of its coming in is low.

15 If the defendant takes the witness stand and  
16 you want to base your opening statement on the  
17 assumption that he's going to take the witness  
18 stand, then you can say whatever it is you think  
19 he's going to say, and even then the question of  
20 bolstering with something on the tapes remains an  
21 iffy proposition.

22 Now, because the government and I have not  
23 been informed--and you have no duty to do  
24 so--informed us of precisely what direction defense  
25 is going to take, it's just impossible to make an

1 effective ruling on what part of the tapes come in.  
2 If your plan is to put the defendant on, then all  
3 you have to do is say this is what the evidence is  
4 going to show and my client isn't guilty or the  
5 government can't prove its case, but I don't see an  
6 advance ruling on what portions of the tapes you  
7 want to play to be feasible in this circumstance  
8 because the standard is basically it's hearsay.

9           The government can use it because you're on  
10 the opposite side, and you can't use it because  
11 you're not on the opposite side, they're using it  
12 against a opposing party, which is permitted, and  
13 you want to use it in your own favor, it's a very  
14 old rule.

15           MR. ETTINGER: I think I got some exceptions  
16 but you may not agree with me.

17           THE COURT: The truth is, almost all of those  
18 exceptions are going to depend in the context of the  
19 evidence, and I can't give you an advance ruling.

20           MR. SCHAR: And, again, we just request at  
21 some point to find out what the calls are so we  
22 could address it as well.

23           THE COURT: The one thing you might consider  
24 doing is giving them the tabs without actually  
25 having to give them the part, that way you can

1 conceal your surprise weaponry.

2 MR. ETTINGER: I'll give them the tabs.

3 THE COURT: Okay? Thanks.

4 MR. SOROSKY: One last issue, Your Honor.

5 THE COURT: You actually shouldn't do after I  
6 said "thanks."

7 MR. SOROSKY: No, this doesn't concern any of  
8 the topics you ruled on. What about the possibility  
9 of daily copy for the defendant Rod Blagojevich?  
10 And we don't necessarily need an answer today this  
11 second.

12 THE COURT: I think that's one very expensive  
13 proposition, and, two, maybe for some parts but not  
14 for others.

15 MR. SOROSKY: Thank you.

16 MR. SCHAR: Thank you.

17 THE CLERK: All rise.

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19 (which concluded the proceedings had on  
20 this date in the above entitled cause.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
MATTER

/s/Blanca I. Lara

date

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Blanca I. Lara

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